

Chapter 4.5. Division of Workers' Compensation
Subchapter 1. Administrative Director -- Administrative Rules
Article 3.5. Medical Provider Networks

9767.16 Notice of Employee Rights Upon Termination or Cessation of Use of Medical Provider Network

Before termination or cessation of use of any Medical Provider Network, the employer or insurer shall give each covered employee not less than 45 calendar days' written notice of the effective termination or cessation of use date of the employer and/or insurer's use of the MPN. The notice required by this section shall be made available in English and Spanish.

(a) The notice, which may be produced on the employer or insurer's letterhead, shall inform every covered employee that after the effective date of termination and/or cessation of use of the MPN, and where 30 days have elapsed from the date the employee notified the employer of his or her injury, an employee who has an industrial illness or injury that is being treated by the MPN shall have the right under Labor Code section 4600 to be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area.

(b) The notice shall also advise every employee that any covered employee with a new industrial injury or illness occurring on or after the effective date of termination or cessation of use of the MPN, will be free to either continue with his or her current physician or to select a physician, pursuant to Labor Code section 4600, 30 days after the date the employee reported his or her injury.

(c) The notice shall also inform every covered employee that any injured worker receiving treatment at the time of the effective date of termination or cessation of use of the MPN may be entitled to continuity of care, pursuant to section 9767.10 of these regulations, to continue treatment with his or her terminated MPN provider.

(1) If it is the employer that terminates or otherwise ceases use of the MPN, the employer shall advise every covered employee of the insurer's liability for continuing care for ongoing claims, and the potential penalties that may be imposed by the WCAB for unreasonable delay or interruption of that care.

(2) If it is the insurer that terminates the MPN, the insurer shall advise every covered employee of the insurer's liability for continuing care for ongoing claims, and the potential penalties that may be imposed by the WCAB for unreasonable delay or interruption of that care.

(d) The notice shall provide the name, address and telephone number of the person to contact with questions concerning the termination or cessation of use of the MPN, including any questions about continuity of care arrangements.

(e) Notice of the termination or cessation of use of a MPN shall be transmitted by the MPN to the Division, not less than 30 calendar days prior to the effective date of the termination or

cessation of use of the MPN by submitting a “Notice of Material Modification” form set forth in section 9767.8 of these regulations. MPN Applicants should check the “Other” category on the Notice and provide the effective date of the termination or cessation of use of a MPN, and a copy of the employee notice sent to the covered employees pursuant to this section.

Authority: Sections 59, 124, 133, 138.3, 138.4, 4616, and 5307.3, Labor Code.

Reference: Section 4616.2, Labor Code.

**Chapter 4.5. Division of Workers' Compensation Subchapter 1. Administrative Director --
Administrative Rules Article 8.**

Notices for Injuries Involving Loss of Time or Denial of Claim

**Benefit Notices; Claims Administrator's Duties and Responsibilities; Claim Form and
Notice of Potential Eligibility for Benefits; Regulatory Authority of the Administrative
Director.**

§9810. General Provisions.

(a) This Article applies to benefit notices prepared on or after its effective date. Amendments to this Article filed with the Secretary of State ~~in January, 1994~~ on (OAL TO INSERT THE DATE OF FILING WITH SECRETARY OF STATE HERE) shall become effective for notices required to be sent on or after ~~April 1, 1994~~ (OAL TO INSERT A DATE 60 DAYS AFTER THE DATE OF FILING WITH SECRETARY OF STATE HERE).

(b) The Administrative Director may, ~~at his or her discretion,~~ issue and revise from time to time a Benefit Notice Instruction Manual as a guide for completing and serving the notices required by this Article.

(c) Benefit notice letters, excepting those mandatory notices set forth in statute or where a specific notice form has been adopted as a regulation, may be produced on the claims administrator's letterhead. The notice letters shall identify the claims administrator's name, address and telephone number, the employee's name, employer's name, the claim number, the date the notice was sent to the employee, and the date of injury. All notices shall clearly identify the name and telephone number and mailing address of the person individual claims examiner responsible for the payment and adjusting of the claim, and include a notation if one or more attachments are being sent with the notice and shall clearly state that additional information may be obtained from an Information and Assistance officer with the Division of Workers' Compensation. If the employer offers additional disability benefits in addition to those provided by law under workers' compensation, the claims administrator may incorporate the information within the notices required by these regulations. A single benefit notice may encompass multiple events.-

(d) Benefit notices, excepting those mandatory notices set forth in statute or where a specific notice form has been adopted as a regulation, may be produced in any format developed by the claims administrator, so long as each benefit notice accurately contains all relevant notice elements required by either statute or regulation. The Administrative Director shall make sample notices that comply with these requirements available on the DWC website.

~~(d)~~(e) The claims administrator shall make available to the employee, upon request, copies of medical reports, relevant to any benefit notice issued, but which have not already been provided, or which are not required to be provided along with a notice, other than psychiatric reports which the physician has recommended not be provided to the employee.

~~(e)~~(f) The claims administrator shall send a copy of each benefit notice, and any enclosures not previously served on the attorney ~~(except benefit notice pamphlets)~~, concurrently to the attorney of any represented employee.

~~(f)~~(g) Any deadline for reply which is measured from the date a notice is sent, and all rights protected within the deadline, are extended if the notice is sent by mail, as follows: by 5 days if the place of mailing and the place of address are in the same state of the United States; by 10 days if the place of mailing and the place of address are in different states of the United States; by 20 days if the place of mailing is in and the place of address is outside the United States. All notices shall be mailed from the United States.

~~(g)~~(h) Copies of all benefit notices sent to injured workers shall be maintained by the claims administrator in the claims file. In lieu of retaining a copy of any attachments to the notice, the claims administrator may identify the attachments by name and revision date on the notice. These copies may be maintained in paper or electronic form.

(i) All benefit notices shall be made available in English and Spanish.

Authority: Sections 59, 124, 133, 138.3, 138.4, 139.5(a)(2), 4061(a), (b), (d) and 5307.3, Labor Code.

Reference: Sections 138.4, 139.5(a)(3), 4061 and 4650(a) through (d), Labor Code.

§9811. Definitions.

As used in this Article:

(a) "Claims Administrator" means a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, a self-administered joint powers authority, a self-administered legally uninsured, ~~or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, or joint powers authority, or an administrator for an alternative dispute resolution (ADR) program established under Labor Code section 3201.5 or 3201.7.~~

~~(b) "Date of knowledge of injury" means the date the employer had knowledge of a worker's injury or claim of injury.~~

(e)(b) "Date of knowledge of Injury and disability" means the date the employer had knowledge of (1) a worker's injury or claim of injury, and (2) the worker's inability or claimed inability to work because of the injury.

(d)(c) "Duration" means any known period of time for which benefits are to be paid, or, where benefits will continue for an unknown period of time the event that will occur which will determine when benefits will terminate.

(e)(d) "Employee" includes dependent(s) in the event of any injury which results in death.

(f)(e) "Employee's (or claimant's) remedies", means a statement of the employee's rights of which an employee or claimant shall be informed in benefit notices when specified in these regulations, ~~means the right to disagree with the decision; to consult with an Information and Assistance Officer; to consult with and be represented by an attorney; to apply to the Workers' Compensation Appeals Board, or in the case of a vocational rehabilitation dispute to the Rehabilitation Unit, to resolve a dispute.~~

Every benefit notice, excepting those mandatory notices set forth in statute or where a specific notice form has been adopted as a regulation, shall include a mandatory statement of employee's (or claimant's) remedies:

For claims not falling under an alternative dispute resolution program (ADR) program under Labor Code sections 3201.5 or 3201.7, the following language shall be used:

You have a right to disagree with decisions affecting your claim. If you have any questions regarding the information provided to you in this notice, please call: (insert adjuster's name and telephone number). However, if you are represented by an attorney, you should call your attorney, not the claims adjuster. If you want further information on your rights to benefits or disagree with our decision, you may contact your local state Information & Assistance Office of the Division of Workers' Compensation by calling (insert local I&A number).

For recorded information and a list of offices, call (800)736-7401. You may also visit the DWC website at:

http://www.dir.ca.gov/DWC/dwc_home_page.htm

You also have a right to consult with an attorney of your choice. Should you decide to be represented by an attorney, you may or may not receive a larger award, but, unless you are determined to be ineligible for an award, the attorney's fee will be deducted from any award you might receive for disability benefits. The decision to be represented by an attorney is yours to make, but it is voluntary and may not be necessary for you to receive your benefits.

To resolve a dispute, you may apply to [choose appropriate option(s)] the Workers' Compensation Appeals Board, the Vocational Rehabilitation Unit, or the Administrative Director.

For employees subject to an ADR program under Labor Code sections 3201.5 or 3201.7, the claims administrator may substitute the following language where appropriate:

You have a right to disagree with decisions affecting your claim. If you have any questions regarding the information provided to you in this notice, please call: (insert adjuster's name and telephone number) or, (insert name of ombudsperson or mediator if employee is subject to an ADR agreement). However, if you are represented by an attorney, you should call your attorney, not the claims adjuster, ombudsperson or mediator. If you want further information on your rights to benefits or disagree with our decision, you may also contact your local state Information & Assistance Office of the Division of Workers' Compensation by calling (insert local I&A number). Please be sure to inform the Information and Assistance Officer that you are subject to an alternative dispute resolution program.

For recorded information and a list of offices, call (800)736-7401. You may also visit the DWC website at:

http://www.dir.ca.gov/DWC/dwc_home_page.htm

In accordance with the (insert union name) agreement, active participation by an attorney is not allowed in the Ombudsman and Mediation stages of the ADR workers' compensation process. Your right to obtain legal advice is not limited and you may obtain such at your own expense at anytime. If the Ombudsman and Mediation stages of dispute resolution are unsuccessful and a written request for Arbitration has been timely filed, attorney participation is allowed.

(g)(f) "Employer" means any person or entity defined as an employer by Labor Code Section 3300.

(h)(g) "Injury" means any injury as defined in Labor Code Section 3208 which results in ~~lost time beyond the date of injury~~, medical treatment beyond first aid, lost time beyond the date of injury, or death.

(h) "Permanent and stationary status," for any permanent disability evaluation performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005, means the point when a ratable medical report states that the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment.

Authority: Sections 59, 133, 138.3, 138.4 and 5307.3, Labor Code.

Reference: Sections 138.4, 139.5(c), (d), 3201.5, 3201.7, 3208, 3300, 3351, 3351.5, 3700, 3753, 4635(a), 4650(a) through (d), 4653, 4654, 4700 and 4701, Labor Code; Sections 11651 and 11652, Insurance Code; Sections 2330 and 2332, Civil Code.

§9812. Benefit Payment and Notice.

(a) Temporary Disability Notices. When an injury causes or is claimed to cause temporary disability:

- (1) Notice of First Temporary Disability Indemnity Payment. The first time the claims administrator pays temporary disability indemnity, the claims administrator shall advise the employee of the amount of temporary disability indemnity due, how it was calculated, and the duration and schedule of indemnity payments. The Temporary Disability Notice shall be sent no later than the 14th day after the employer's date of knowledge of injury and disability. A copy of the most recent version of the DWC informative pamphlet "Temporary Disability Fact Sheet" shall be provided with the notice.
- (2) Notice of Delay in Any Temporary Disability Indemnity Payment. If the employee's entitlement to any period of temporary disability indemnity cannot be determined within 14 days of the date of knowledge of injury and disability, the claims administrator shall advise the employee within the 14-day period of the delay, the reasons for it, the need, if any, for additional information required to make a determination, and when a determination is likely to be made. The claims administrator shall send an additional notice or notices within 5 days after the determination date it specified, to advise of any further delay. If the claims administrator cannot make a determination by the date specified in a notice to the injured worker, the claims administrator shall send a subsequent delay notice to the injured worker, not later than the determination date specified in the previous delay notice, notifying the injured worker of the revised date by which the claims administrator now expects the determination to be made.

The notice shall advise an unrepresented employee:

If the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. If no comprehensive medical evaluation has taken place, the injured worker may obtain an evaluation by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.1. The notice shall include the claims administrator's decision on whether the claims administrator accepts or refutes the treating physician's evaluation of the employee's temporary disability status and shall be accompanied by the form prescribed by the DWC Medical Unit with which to request assignment of a panel of Qualified Medical Evaluators. The notice shall advise the injured worker of the 10 day time limit in which a panel may be requested and in which an appointment must be made following receipt of the panel.

The notice shall advise a represented employee:

If the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. If no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed

Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.2 and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.

A copy of the most recent version of the DWC informative pamphlet "QME/AME Fact Sheet" shall be provided with the notice.

The additional delay notices ~~shall include the employee's remedies and~~ shall comply with all requirements for an original delay notice, ~~except that no copy of the DWC informative pamphlet "QME/AME Fact Sheet" need be provided with the notice.~~

- (3) Notice of Denial of Any Temporary Disability Indemnity Payment. If the claims administrator denies liability for the payment of any period for which an employee claims temporary disability indemnity, the notice shall advise the employee of the denial and the reasons for it ~~and the employee's remedies~~. The notice shall be sent within 14 days after the determination to deny was made.

The notice shall advise an unrepresented employee:

If the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. If no comprehensive medical evaluation has taken place, the injured worker may obtain an evaluation by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.1. The notice shall include the claims administrator's decision on whether the claims administrator accepts or refutes the treating physician's evaluation of the employee's temporary disability status and shall be accompanied by the form prescribed by the DWC Medical Unit with which to request assignment of a panel of Qualified Medical Evaluators. The notice shall advise the injured worker of the 10 day time limit in which a panel may be requested and in which an appointment must be made following receipt of the panel.

The notice shall advise a represented employee:

If the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. If no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.2 and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.

Unless a copy has already been provided, a copy of the relevant DWC informative pamphlet(s) “TD Fact Sheet,” “QME/AME Fact Sheet” and/or “Permanent Disability Fact Sheet” shall be provided at this time.

(b) Notice of Resumed Benefit Payments (TD, SC, PD, VRTD/VRMA). If the payment of temporary disability indemnity, salary continuation, permanent disability indemnity, or vocational rehabilitation temporary disability indemnity or maintenance allowance is resumed after terminating any of these benefits, the claims administrator shall advise the employee of the amount of indemnity due and the duration and schedule of payments. Notice shall be sent within 14 days after the employer's date of knowledge of the entitlement to additional benefits.

(c) Notice of Changed Benefit Rate, Payment Rate or Schedule (TD, SC, PD, VRTD/VRMA). When the claims administrator changes the benefit rate, payment amount or benefit payment schedule for temporary disability indemnity, salary continuation, permanent disability indemnity, or vocational rehabilitation temporary disability indemnity or maintenance allowance, the claims administrator shall advise the employee, as applicable, of the amount of the new benefit rate and the reason the rate is being changed, or of the new benefit payment schedule. Notice shall be given before or with the new payment.

(d) Notice that Benefits Are Ending (TD, SC, PD, VRTD/VRMA). With the last payment of temporary disability indemnity, permanent disability indemnity, salary continuation, or vocational rehabilitation temporary disability indemnity or maintenance allowance, the claims administrator shall advise the employee of the ending of indemnity payments and the reason, and shall make an accounting of all compensation paid to or on behalf of the employee in the species of benefit to which the notice refers, including the dates and amounts paid and any related penalties. If the decision to end payment of indemnity was made after the last payment, the claims administrator shall send the notice and accounting within 14 days of the last payment. ~~The notice shall include the employee's remedies.~~

The notice, except a notice that VRMA is ending, shall advise an unrepresented employee:

If the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. If no comprehensive medical evaluation has taken place, the injured worker may obtain an evaluation by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.1. The notice shall include the claims administrator's decision on whether the claims administrator accepts or refutes the treating physician's evaluation of the employee's temporary disability status or permanent impairment and shall be accompanied by the form prescribed by the DWC Medical Unit with which to request assignment of a panel of Qualified Medical Evaluators. The notice shall advise the injured worker of the 10 day time limit in which a panel may be requested and in which an appointment must be made following receipt of the panel.

The notice, except a notice that VRMA is ending, shall advise a represented employee:

If the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. If no comprehensive medical evaluation

has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.2 and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.

Unless a copy has already been provided, a copy of the relevant DWC informative fact sheet pamphlet(s) "TD Fact Sheet," "QME/AME Fact Sheet" and/or "Permanent Disability Fact Sheet" shall be provided at this time.

(e) Permanent Disability Notices For Injuries ~~Which~~ That Occurred Prior To 1991:

- (1) Existence and Extent of Permanent Disability is Known. Within 14 days after the claims administrator knows that the injury has caused permanent disability and knows the extent of that disability, the claims administrator shall advise the employee of the amount of the weekly permanent disability indemnity payment, how it was calculated, the duration and frequency of payments, the date payments can be expected to begin and the total amount to be paid ~~and the employee's remedies if he or she disagrees.~~
- (2) Existence of Permanent Disability is Known, Extent is Uncertain. If the claims administrator knows that the injury has caused permanent disability but cannot determine its extent within the 14 days after the last payment of temporary disability indemnity, or within 14 days after knowledge that the employee's injury has resulted in permanent disability if there was no compensable temporary disability, the claims administrator nevertheless shall make timely payment of permanent disability indemnity and shall advise the employee of the amount of the weekly permanent disability indemnity payment, how it was calculated, the duration and schedule of payments, and the claims administrator's reasonable estimate of the amount of permanent disability indemnity to be paid. The claims administrator shall notify the employee that his or her medical condition will be monitored until the extent of permanent disability can be determined and that the disability payments will be revised at that time if appropriate. Within 14 days after the claims administrator determines the extent of permanent disability indemnity benefits, the claims administrator shall notify the employee as provided by paragraph (1).
- (3) Existence of Permanent Disability is Uncertain. If the existence of permanent disability is uncertain, the claims administrator shall advise the employee within 14 days after the last payment of temporary disability indemnity, or within 14 days of receiving a claim or medical report alleging the existence of permanent disability if the claims administrator paid no temporary disability, that the claims administrator cannot yet determine whether the injury will cause permanent disability. The notice shall specify the reasons for the delay in determination, the need, if any, for additional information required to make a determination, and when the determination is likely to be made. ~~The claims administrator shall send an additional notice or notices within 5 days after the determination date it specified, to advise of any further delay.~~ If the claims administrator cannot make a determination by the date it specified in a notice to the injured worker, the claims administrator shall send a subsequent notice to the injured worker, not later than the

determination date specified in the previous notice, notifying the injured worker of the date by which the claims administrator now expects the determination to be made. The additional delay notices shall ~~include the employee's remedies and~~ shall comply with all requirements for an original delay notice. If the reason for the delay is that the employee's medical condition is not permanent and stationary, the claims administrator shall advise the employee that his or her medical condition will be monitored until it is permanent and stationary, at which time an evaluation will be performed to determine the amount of permanent disability indemnity, if any, due the employee. Within 14 days after the claims administrator determines that permanent disability exists, the claims administrator shall notify the employee of the commencement of permanent disability indemnity payments as provided by paragraph (1) or (2).

- (4) Notice That No Permanent Disability Exists. If the claims administrator alleges that the injury has caused no permanent disability, the claims administrator shall advise the employee within 14 days after the claims administrator determines that the injury has caused no permanent disability ~~and shall include the employee's remedies.~~

(f) Permanent Disability Notices for Injuries Occurring in 1991, 1992, 1993.

- (1) Condition Not Permanent and Stationary (P & S), May Cause Permanent Disability-- Notice of Monitoring Until P&S Date. If the injury has resulted or may result in permanent disability but the employee's medical condition is not permanent and stationary, the claims administrator shall advise the employee, together with the last payment of temporary disability indemnity, that permanent disability indemnity is or may be payable but that the amount cannot be determined because the employee's medical condition has not yet reached a stationary status. The notice shall advise the employee that his or her medical condition will be monitored until it is permanent and stationary, at which time a medical evaluation will be performed to determine the existence and extent of permanent impairment or limitations and the need for continuing medical care. The notice shall advise the employee of the estimated date when a determination is likely to be made, and the claimant's remedies. ~~The claims administrator shall send an additional notice or notices within 5 days after the determination date it specified, to advise of any further delay.~~ If the claims administrator cannot make a determination of A) permanent and stationary status, B) the existence and extent of permanent impairment or limitations, and C) the need for continuing medical care by the date it specified in a monitoring notice to the injured worker, the claims administrator shall send a subsequent notice to the injured worker, not later than the determination date specified in the previous notice, notifying the injured worker of the date by which the claims administrator now expects the determination to be made. The additional ~~delay notices shall include the employee's remedies and~~ notice shall comply with all requirements ~~for an~~ of the original ~~delay~~ notice.
- (2) Condition Becomes Permanent and Stationary, May Cause Permanent Disability--Notice of Qualified Medical Evaluator (QME) Procedures. Within 5 working days after receiving information indicating that the employee's condition is permanent and stationary and has caused or may have caused permanent disability, the claims

administrator shall advise the employee that his or her medical condition is permanent and stationary and of the procedures for evaluating permanent disability and need for continuing medical care, ~~and shall include the employee's remedies.~~

The notice shall advise an unrepresented employee:

If the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. If no comprehensive medical evaluation has taken place, the injured worker may obtain an evaluation by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.1. The notice shall include the claims administrator's decision on whether the claims administrator accepts or refutes the treating physician's evaluation of the employee's permanent impairment and shall be accompanied by the form prescribed by the DWC Medical Unit with which to request assignment of a panel of Qualified Medical Evaluators. The notice shall advise the injured worker of the 10 day time limit in which a panel may be requested and in which an appointment must be made following receipt of the panel.

The notice shall advise a represented employee:

If the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. If no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.2 and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.

Unless a copy has already been provided, a copy of the most recent version of the DWC informative pamphlet "QME/AME Fact Sheet" shall be provided with the notice.

- (3) Notice of Permanent Disability Indemnity ~~Advances~~ Payment When Injury Causes Permanent Disability. If the claims administrator knows that the employee has sustained permanent disability, whether or not its extent is known and whether or not the employee's medical condition is permanent and stationary, the claims administrator shall advise the employee of the weekly permanent disability indemnity payment, how it was calculated, the duration and schedule of payments, and the claims administrator's reasonable estimate of permanent disability indemnity to be paid, within 14 days after the last payment of temporary disability indemnity, or within 14 days after knowledge that the employee's injury has resulted in permanent disability, whichever is later.

The notice shall advise an unrepresented employee:

If the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. If no comprehensive

medical evaluation has taken place, the injured worker may obtain an evaluation by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.1. The notice shall include the claims administrator's decision on whether the claims administrator accepts or refutes the treating physician's evaluation of the employee's permanent impairment and shall be accompanied by the form prescribed by the DWC Medical Unit with which to request assignment of a panel of Qualified Medical Evaluators. The notice shall advise the injured worker of the 10 day time limit in which a panel may be requested and in which an appointment must be made following receipt of the panel.

The notice shall advise a represented employee:

If the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. If no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.2 and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.

- (4) Notice That No Permanent Disability Exists. If the claims administrator alleges that the injury has caused no permanent disability, the claims administrator shall advise the employee that no permanent disability indemnity is payable. This notice shall be sent within 14 days after the claims administrator determines that the injury has caused no permanent disability. The notice shall ~~also~~ advise the employee of the process to obtain a formal medical evaluation to contest the determination that the employee has no permanent disability ~~and shall advise of the employee's remedies.~~ Unless a copy has already been provided, a copy of the most recent version of the DWC informative pamphlet "QME/AME Fact Sheet," shall be provided with the notice. A copy of the DWC form prescribed by the Administrative Director for requesting assignment of a panel of Qualified Medical Evaluators shall be provided with the notice unless the employee is represented by an attorney.

(g) Permanent Disability Notices for Injuries Occurring on or after January 1, 1994:

~~All notices in this subdivision shall include the following mandatory language:~~

~~"Please call me if you have questions. If you want further information, you may contact the local state Information and Assistance office by calling [enter district I & A office telephone number closest to the injured worker] or you may receive recorded information by calling 1-800-736-7401.~~

~~You may also consult an attorney of your choice. Should you decide to be represented by an attorney, you may or may not receive a larger award, but, unless you are determined to be ineligible for an award, the attorney's fee will be deducted from any award you might receive for disability benefits. The decision to be represented by an attorney is yours to make, but it is voluntary and may not be necessary for you to receive your benefits".~~

- (1) Condition Not Permanent and Stationary, May Cause Permanent Disability--Notice of Monitoring Until P&S Date. If the injury has resulted or may result in permanent disability but the employee's medical condition is not permanent and stationary, the claims administrator shall advise the employee together with the last payment of temporary disability indemnity, that permanent disability indemnity is or may be payable but that the amount cannot be determined because the employee's medical condition has not yet reached a stationary status. The notice shall advise the employee that his or her medical condition will be monitored until it is permanent and stationary, at which time a medical evaluation will be performed to determine the existence and extent of permanent impairment or limitations and the need for continuing medical care. The notice shall advise the employee of the estimated date when a determination is likely to be made. ~~The claims administrator shall send an additional notice or notices within 5 days after the determination date it specified, to advise of any further delay.~~ If the claims administrator cannot make a determination of A) permanent and stationary status, B) the existence and extent of permanent impairment or limitations, and C) the need for continuing medical care by the date it specified in a monitoring notice to the injured worker, the claims administrator shall send a subsequent notice to the injured worker, not later than the determination date specified in the previous notice, notifying the injured worker of the date by which the claims administrator now expects the determination to be made. The additional ~~delay notices shall include the employee's remedies and~~ notice shall comply with all requirements ~~for an~~ of the original ~~delay~~ notice.
- (2) Condition Becomes Permanent and Stationary, Causes Permanent Disability--Notice of QME/AME Procedures. Together with the last payment of temporary disability or within 14 days of ~~determining the amount of permanent disability payable, the knowledge that the injury is permanent and stationary or has caused permanent disability,~~ the claims administrator shall provide notice of the procedures available to obtain a QME or AME evaluation. The claims administrator shall advise the employee of the claims administrator's determination of the amount of permanent disability indemnity payable, the basis for the determination, and whether there is need for continuing medical care. Unless they have already been provided, a copy of the medical report on which the determination of permanent disability was based, a copy of the most recent version of the DWC informative pamphlets, QME/AME Fact Sheet and/or Temporary Disability Fact Sheet, shall be provided with the notice.

The notice shall ~~include the employee's available remedies and~~ advise an unrepresented employee:

- (A) ~~If the employee is unrepresented, the notice shall advise the employee that if either party disagrees with the treating physician's report, the worker must follow the procedures to request a comprehensive medical evaluation from a panel of Qualified Medical Evaluators supplied by the Industrial Medical Council.~~ If the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. If no comprehensive medical evaluation has taken place, the injured worker may obtain an evaluation by a

Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.1. The notice shall include the claims administrator's decision on whether the claims administrator accepts or refutes the treating physician's evaluation of the employee's permanent impairment and shall be accompanied by the form prescribed by the ~~Industrial Medical Council~~ DWC Medical Unit with which to request assignment of a panel of Qualified Medical Evaluators. The notice shall advise the injured worker of the 10 day time limit in which a panel may be requested and in which an appointment must be made following receipt of the panel.

- (B) If the ~~employee is unrepresented and the~~ claims administrator is not requesting a rating from the Disability Evaluation Unit, the notice shall also advise the worker that he or she may contact an Information and Assistance Officer to have the treating physician's evaluation reviewed and rated by the State of California Disability Evaluation Unit.
- (C) If the ~~employee is unrepresented and the~~ claims administrator has or will be requesting a rating from the Disability Evaluation Unit on the treating physician's evaluation, the notice shall advise the employee that he or she will be receiving a rating based on the treating physician's evaluation from the Disability Evaluation Unit.

The notice shall ~~include the employee's available remedies and~~ advise a represented employee:

- (D) ~~If the employee is represented by an attorney, the notice shall advise the employee that or she may obtain an additional medical evaluation by an Agreed Medical Examiner or, if no agreement on an Agreed Medical Examiner can be reached, by a Qualified Medical Evaluator of his or her choice, and that arrangements for this evaluation should be discussed with the employee's attorney. The notice shall also indicate whether or not the claims administrator disputes the treating physician's evaluation of the employee's permanent impairment and limitations. If the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. If no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.2 and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.~~

- (3) Notice That No Permanent Disability Exists. If the claims administrator alleges that the injury has caused no permanent disability, the claims administrator shall advise the employee that no permanent disability indemnity is payable. This notice shall be sent together with the last payment of temporary disability indemnity or within 14 days after the claims administrator determines that the injury has caused no permanent disability.

Unless they have already been provided, a copy of the medical report on which the determination of no permanent disability was based, and a copy of the most recent version of the DWC informative pamphlets, QME/AME Fact Sheet and Permanent Disability Fact Sheet shall be provided with the notice. A copy of the DWC form prescribed by the Administrative Director for requesting assignment of a panel of Qualified Medical Evaluators shall be provided with the notice unless the employee is represented by an attorney.

The notice shall ~~include the employee's remedies and~~ advise an unrepresented employee:

- (A) ~~If the employee is unrepresented, the notice shall advise the worker that if he or she disagrees with the treating physician's report on which the claims administrator's determination is made, he or she may request a comprehensive medical evaluation from a physician selected from a panel of Qualified Medical Evaluators supplied by the Industrial Medical Council. If the injured worker has already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. If no comprehensive medical evaluation has taken place, the injured worker may obtain an evaluation by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.1. The notice shall also advise of the procedure for requesting the panel and shall be accompanied by the form prescribed by the DWC Medical Unit. Industrial Medical Council with which to request assignment of a panel of Qualified Medical Evaluators. The notice shall advise the injured worker of the 10 day time limit in which a panel may be requested and in which an appointment must be made following receipt of the panel.~~
- (B) ~~If the employee is unrepresented,~~ The notice shall also advise the worker that he or she may contact an Information and Assistance office to have the treating physician's evaluation review and rated by the ~~State of California~~ DWC Disability Evaluation Unit.
- (C) ~~If the employee is unrepresented and the claims administrator has or will be requesting requests~~ a rating from the Disability Evaluation Unit on the treating physician's report, the notice shall advise the employee that he or she will be receiving a rating based on the treating physician's evaluation from the DWC Disability Evaluation Unit.

The notice shall ~~include the employee's remedies and~~ advise a represented employee:

- ~~(D) If the employee is represented by an attorney, the notice shall advise the employee that additional evaluation may be obtained from an Agreed Medical Evaluator or, if no agreement on an Agreed Medical Evaluator can be reached, by a Qualified Medical Evaluator of his or her choice and that arrangements for this evaluation should be discussed with the employee's attorney. The notice shall also indicate whether or not the claims administrator disputes the treating physician's evaluation of the employee's permanent impairment and limitations. If the injured worker has~~

already received a comprehensive medical evaluation, he or she may be asked to return to that physician for a new evaluation. If no comprehensive medical evaluation has taken place, an evaluation may be obtained from an Agreed Medical Evaluator if the parties agree or, if no agreement on an Agreed Medical Evaluator can be reached, the injured worker may be evaluated by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.2 and that arrangements for obtaining this evaluation should be discussed with the injured worker's attorney.

- (4) Notice of Permanent Disability Indemnity ~~Advances~~ Payment When Injury Causes Permanent Disability. If the claims administrator knows that the employee has sustained permanent disability, whether or not its extent is known and whether or not the employee's medical condition is permanent and stationary, the claims administrator shall advise the employee of the weekly permanent disability indemnity payment, how it was calculated, the duration and schedule of payments, and the claims administrator's reasonable estimate of permanent disability indemnity to be paid, within 14 days after the last payment of temporary disability indemnity, or within 14 days after knowledge that the employee's injury has resulted in permanent disability, whichever is later. Unless a copy has already been provided, a copy of the most recent version of the DWC informative pamphlet "Permanent Disability Fact Sheet," shall be provided with the notice.

For injuries occurring on or after January 1, 2005, the claims administrator shall, concurrently with any increased or decreased payment, notify the injured worker of any increase or decrease in the amount of the injured worker's permanent disability payments, pursuant to Labor Code section 4658, subdivision (d) resulting from the employer's offer of regular, modified or alternative work and acceptance by the injured worker; or resulting from the employer's failure to offer, the employer's early termination of, or the injured worker's refusal to accept the employer's offer of, regular, modified or alternative work. The information required by this subdivision shall be given in the appropriate PD payment start notice, PD payment resumption notice or notice of change in rate, payment amount or payment schedule.

(h) Notices to Dependents in Death Cases. In a case of fatal injury which is or is claimed to be compensable under the workers' compensation laws of this state, or involving accrued compensation which was not paid to an injured employee before the employee's death, the claims administrator shall advise the dependent(s) of the status of any benefits to which they may be entitled or which they have claimed as a result of the employee's death. As used in this subsection, "dependent" includes any person who may be or has claimed to be entitled to workers' compensation benefits as the result of an employee's death (including compensation which was accrued and unpaid to an injured worker before his or her death), and also includes the parent or legal guardian of minor dependent children. The claims administrator shall send each dependent a copy of all notices concerning benefits claimed by, or which may be payable to, that dependent, including notices sent to a different dependent if the benefits paid to the different dependent affect the amount payable to the other claimant. If the claims administrator discovers a new dependent after having sent a notice, the claims administrator shall send copies

of each prior notice which concerned benefits to which the newly-discovered dependent might be entitled, to that dependent.

- (1) **Benefit Payment Schedule.** If the claims administrator pays death benefits (including compensation which was accrued and unpaid to an injured worker before his or her death), the claims administrator shall advise each affected dependent of the amount of the death benefit payable to the dependent, how it was calculated, the duration and schedule of payments and other pertinent information. Notice is required within 14 days after the claims administrator's date of knowledge both of the death and of the identity and address of the dependent.
- (2) **Notice of Changed Benefit Rate, Amount or Schedule or that Benefits are Ending.** If the claims administrator changes the benefit rate, amount or payment schedule, or ends payment, of a death benefit to a dependent, the claims administrator shall advise the affected dependent of the change and the reason for it, or of the new payment schedule. A notice that benefits are ending shall include an accounting of all compensation paid to the claimant. A notice that payment is ending shall be sent with the last payment unless the decision to end payment was made after that payment; in that case it shall be sent within 14 days of the last payment. Other notices concerning changed payments shall be sent before or with the changed payment, but not later than 14 days after the last payment which was made before the change.
- (3) **Delay in Determining Benefits.** If the claims administrator cannot determine entitlement to some or all death benefits, the claims administrator shall advise each affected dependent of the delay, the reasons for it, the need, if any, for additional information required to make a determination, and when a determination is likely to be made. Notice is required within 14 days after the claims administrator's date of knowledge of the death, the identity and address of the affected dependent, and the nature of the benefit claimed or which might be due. ~~The claims administrator shall send an additional notice or notices the determination date it specified, to advise of any further delay.~~ If the claims administrator cannot make a determination by the date it specified in a notice to the affected dependent(s), the claims administrator shall send a subsequent notice to the affected dependent(s), not later than the determination date specified in the previous notice, notifying the affected dependent(s) of the date by which the claims administrator now expects the determination to be made. The additional delay notices ~~shall include the employee's remedies and~~ shall comply with all requirements for an original delay notice.
- (4) **Notices Denying Death Benefits.** If the claims administrator denies liability for the payment of any or all death benefits, the claims administrator shall advise the ~~claimant~~ affected dependent(s) of the denial, and the reasons for it ~~and the claimant's remedies.~~ The notice shall be sent within 14 days after the determination to deny was made.
 - (i) **Notice Denying Liability for All Compensation Benefits.** If the claims administrator denies liability for the payment of all workers' compensation benefits for any claim except a claim for death benefits, including medical-only claims, the claims administrator shall advise the employee of the denial and the reasons for it, ~~and the claimant's remedies.~~ The notice shall be

sent no later than 14 days after the determination to deny was made. A copy of the most recent version of the DWC informative pamphlet “QME/AME Fact Sheet” shall be provided with the notice.

For claims reported on or after April 19, 2004, if an injured worker is entitled to medical care under Labor Code section 5402(c) the claims administrator shall advise the injured worker to send all bills for such treatment to the claims administrator for consideration of payment unless he or she has done so already.

A copy of the Notice Denying Liability for All Compensation Benefits shall be served on all lien claimants or all persons or entities who can reasonably be identified by the claims administrator from information in the claims file to be potential lien claimants on account of their having furnished benefits, goods or services for which a lien may be filed under Labor Code sections 4903 through 4906, inclusive.

(j) Notice of Delay in Determining All Liability. If the claims administrator cannot determine whether the employer has any liability for an injury, other than an injury causing death, within 14 days of the date of knowledge of injury, the claims administrator shall advise the employee within the 14-day period of the delay, the reasons for it, the need, if any, for additional information required to make a determination, and when a determination is likely to be made. ~~The claims administrator shall send an additional notice or notices within 5 days after the determination date it specified, to advise of any further delay.~~ If the claims administrator cannot make a determination by the date it specified in a notice to the injured worker, the claims administrator shall send a subsequent notice to the injured worker, not later than the determination date specified in the previous notice, notifying the injured worker of the date by which the claims administrator now expects the determination to be made. The additional delay notices shall ~~include the employee's remedies and shall comply with all requirements for an original delay notice.~~ A copy of the most recent version of the DWC informative pamphlet “QME/AME Fact Sheet” shall be provided with the notice.

(1) For injuries on or after January 1, 1990, if the claims administrator sends a notice of a delay in its decision whether to accept or deny liability for the claim, the notice shall include an explanation that the claim is presumed to be compensable if not denied within 90 days from the filing of the claim form, and that this presumption can be rebutted only with evidence discovered after the 90-day period.

(2) For claims reported on or after April 19, 2004, regardless of the date of injury, if the claims administrator sends a notice of delay in its decision whether to accept or deny liability for the claim, the notice shall include an explanation that Labor Code section 5402(c), provides that within one working day after an employee files a claim form, the employer shall authorize the provision of all treatment, consistent with the applicable treatment guidelines, for the alleged injury and shall continue to provide treatment until the date that liability is rejected. The notice shall advise the injured worker that the employer's liability for medical treatment under this Labor Code section is limited to ten thousand dollars (\$10,000).

Authority: Sections 59, 133, 138.3, 138.4, 139.5(a)(2), 4636(d), 4637 and 5307.3, Labor Code.

Reference: Sections 138.4, 139.5, 4061(a), (b), (d)(e)(f), 4062.1, 4650(a) through (d), 4658(d) 4661.5, 4700, 4701, 4702, 4703, 4703.5, 4903(a) through 4906 and 5402, Labor Code.

§9813. Vocational Rehabilitation Notices.

- (a) The following notices are applicable to ~~all~~ dates of injury ~~unless otherwise specified~~ : through December 31, 2003. This section shall not apply to dates of injury on or after January 1, 2004.

- (1) Notice of First Payment. The first time the claims administrator pays vocational rehabilitation temporary disability or maintenance allowance, the claims administrator shall advise the employee of the amount of indemnity due, how it was calculated, and the duration and schedule of indemnity payments. The notice is due by the 14th day after the employee requested vocational rehabilitation services. The notice shall include, if applicable, the employee's option to add an amount from permanent disability benefits to increase the maintenance allowance payments to the temporary disability rate.
- (2) Delay in Providing Vocational Rehabilitation. If upon receipt of a medical report which indicates that an employee is likely to be precluded from his or her usual and customary occupation, or upon receipt of a request for vocational rehabilitation services the claims administrator cannot determine the employee's entitlement to vocational rehabilitation services, a notice of delay shall be sent. The notice shall be sent no later than 10 days from the date of receipt of the medical report or no later than 10 days from receipt of the employee's request for services.

The delay notice shall explain the reason for delay, the need, if any, for additional information required to make a determination and the date by which a determination is likely to be made. ~~The claims administrator shall send an additional notice or notices no later than 5 days after the determination date specified, to advise of any further delay.~~ If the claims administrator cannot make a determination by the date it specified in a notice to the injured worker, the claims administrator shall send a subsequent notice to the injured worker, not later than the determination date specified in the previous notice, notifying the injured worker of the date by which the claims administrator now expects the determination to be made. The additional delay notices shall include the employee's remedies and shall comply with all requirements for an original delay notice.

- (3) Denial of Vocational Rehabilitation Benefits. The claims administrator shall advise the employee of its determination that an employee is not a qualified injured worker, the reasons for it, enclosed a copy of the document in which the determination is based and the employee's remedies. The notice shall include a DWC Form RU 103 Request for Dispute Resolution ~~and, if no Rehabilitation Unit case number exists, a DWC Form RU 101 Case Initiation Document.~~ The notice is due within 10 days of either:
 - (A) A request for vocational rehabilitation services; or
 - (B) Receipt of a treating physician's final report determining medical eligibility subsequent to 90 days of aggregate total temporary disability; or

- (C) Receipt of the document upon which the claims administrator relied for its determination.

If the claims administrator denies liability for rehabilitation services but remains liable for paying VRTD or VRMA benefits, the notice shall explain the distinction between the terminated and continuing rehabilitation benefits.

If the denial is on the basis that the employee is not medically eligible, unless a copy has already been provided, a copy of the DWC informative pamphlet "QME/AME Fact Sheet" shall be provided to the employee.

- (4) Interruption or Deferral of Vocational Rehabilitation Services. Within 10 days after agreeing to interrupt or defer vocational rehabilitation services, the claims administrator shall advise the employee of the interruption and the dates it will be in effect. The claims administrator shall send a like notice within 10 days after agreeing to a new or extended period of interruption. The notice shall include an explanation of the specific steps he or she must take to notify the claims administrator that he or she is ready to resume participation (e.g., written or telephonic communication to the claims administrator, the agreed Qualified Rehabilitation Representative or the employee's representative), and information regarding the likely termination of the employee's rights to vocational rehabilitation should the employee fail to request services within 5 years from the date of injury.

If the parties agree to an interruption or deferral which extends beyond the statutory period, the notice shall advise the employee that failure to request services within the agreed upon time frame is likely to terminate the employee's rights to rehabilitation services.

For injuries occurring on or after 1/1/94 where an interruption occurs during a vocational rehabilitation plan, the notice shall explain that the plan must by law be completed within 18 months of approval.

(b) Vocational Rehabilitation Notices for Injuries Occurring Prior to 1990.

- (1) Potential Eligibility for Rehabilitation. Within 10 days of receipt of a physician's report or knowledge of a physician's opinion indicating that an employee may be permanently precluded from his or her usual and customary occupation or the position in which he or she was engaged at the time of injury, or if the employee has been totally temporarily disabled for an aggregate of 180 days, the claims administrator shall notify the employee within 10 days of the 180th day of his or her potential eligibility for vocational rehabilitation services. The notice shall include all of the following information:

- (A) An explanation of the vocational rehabilitation services and rehabilitation temporary disability benefits available to the employee;

- (B) Instructions how the employee may apply for vocational rehabilitation (e.g., by written or telephonic communication to the claims administrator, the agreed Qualified Rehabilitation Representative or the employee's representative);
- (C) Notice of the employee's right to participate in selecting an agreed rehabilitation counselor;
- (D) Notice that vocational rehabilitation benefits may not be settled or otherwise converted to cash payments;
- (E) Either an offer of vocational rehabilitation services, or notice of delay or denial notice in accordance with Section 9813(a)(2) or (3).

(c) Vocational Rehabilitation Notices for Injuries Occurring in 1990, 1991, 1992 or 1993.

- (1) At 90 days of Aggregate Temporary Disability Benefits. The claims administrator shall notify the worker no later than 10 days after an employee has accrued 90 days of aggregate temporary total disability benefits of the assignment of the Qualified Rehabilitation Representative (QRR) for the purpose of explaining the employee's potential entitlement to vocational rehabilitation services. The notice shall include a statement that the QRR will be assisting the employee in the development of a job description to submit to the treating physician for an opinion regarding whether the employee may be released to his or her usual and customary occupation. The notice shall further state that the employee will be notified of the physician's opinion when available.
- (2) Potential Eligibility for Rehabilitation. Within 10 days of receipt of a physician's report or knowledge of a physician's opinion indicating that an employee is medically eligible for vocational rehabilitation, or if prior notice has not been sent, within 10 days after the employee has been totally temporarily disabled for an aggregate of more than 365 days, the claims administrator shall notify the employee of his or her potential eligibility for vocational rehabilitation services. The notice shall include the following information:
 - (A) The "Help in Returning to Work" pamphlet published by the Division of Workers' Compensation;
 - (B) If the notice contains an offer of services, the notice shall include instructions on how to apply for vocational rehabilitation services (e.g., by written or telephonic communication to the claims administrator, the agreed Qualified Rehabilitation Representative or the employee's representative);
 - (C) If the notice contains an offer of services, the notice shall state that failure to apply within 90 days of receipt of this notice may terminate the employee's entitlement to vocational rehabilitation services;
 - (D) If the notice contains an offer of services, information on the employee's right to assist in the selection of an agreed upon Qualified Rehabilitation Representative;

- (E) If the notice contains an offer of services, advice that the employee may request an evaluation of his or her ability to benefit from the provision of services prior to accepting or rejecting vocational rehabilitation services;
 - (F) The notice may include a statement from the claims administrator that every effort will be made to identify a modified or alternate job with the same employer to speed the employee's return to the labor market.
 - (G) Either an offer of vocational rehabilitation services, or a delay or denial notice in accordance with Section 9813(a)(2) or (3) of these regulations.
- (1) **Reminder of Potential Eligibility.** If the employee has not requested vocational rehabilitation services after notification of medical eligibility, the claims administrator shall remind the employee of his or her right to vocational rehabilitation services. The notice shall be made not earlier than 45 nor later than 70 days after the employee's receipt of the Notice of Potential Eligibility.
 - (2) **Intention to Withhold Maintenance Allowance for Failure to Cooperate.** If the employee unreasonably fails to cooperate in the provision of vocational rehabilitation services, the claims administrator shall give the employee written notice of any intention to withhold payment of vocational rehabilitation maintenance allowance, the reasons, and the employee's right to object within 10 days of receiving the notice. The notice shall be made at least 15 days before ending payment of vocational rehabilitation maintenance allowance. The notice include a DWC Form RU 103 "Request for Dispute Resolution" ~~and, if no Rehabilitation Unit case number exists, a DWC Form RU 101 Case Initiation Document.~~
- (d) **Vocational Rehabilitation Notices for Injuries Occurring ~~in~~ on or after January 1, 1994 and before January 1, 2004 ~~or later.~~**
- (1) **At 90 days of Aggregate Temporary Disability Benefits.** The claims administrator shall notify the employee no later than 10 days after the employee accrues 90 days of aggregate temporary total disability benefits of the employee's potential rights to vocational rehabilitation. The notice shall include the "Help in Returning to Work—94" pamphlet as set forth in section 10133.2 of these regulations; ~~published by the Division of Workers' Compensation;~~
 - (2) **Potential Eligibility for Rehabilitation.** Within 10 days of receipt of a physician's report or knowledge of a physician's opinion indicating that an employee is medically eligible for vocational rehabilitation, or if prior notice has not been sent within 10 days after the employee has been totally temporarily disabled for an aggregate of 365 days, the claims administrator shall notify the employee of his or her potential eligibility for vocational rehabilitation services. The notice shall indicate the following information:

- (A) The "Help in Returning to Work—94" pamphlet as set forth in section 10133.2 of these regulations; published by the Division of Workers' Compensation;
 - (B) If the notice contains an offer of services, the notice shall include instructions on how to apply for vocational rehabilitation services (e.g., by written or telephonic communication to the claims administrator, the agreed Qualified Rehabilitation Representative or the employee's representative);
 - (C) If the notice contains an offer of services, the notice shall state that failure to apply within 90 days of receipt of this notice may terminate the employee's entitlement to vocational rehabilitation services;
 - (D) If the notice contains an offer of services, information on the employee's right to assist in the selection of an agreed upon Qualified Rehabilitation Representative;
 - (E) If the notice contains an offer of services, advice that the employee may request an evaluation of their ability to benefit from the provision of services prior to accepting or rejecting vocational rehabilitation services. The employee must further be advised that fees for such an evaluation are included within the forty-five hundred dollars (\$4,500) maximum fees available for counseling services.
 - (F) The notice shall include a statement from the claims administrator whether a modified or alternate job with the employer is available. In the event that additional investigation into the availability of alternate or modified work is required, a final notice regarding the availability of modified or alternate work shall be sent within 30 days. This time limit may be extended by agreement of the parties.
 - (G) Either an offer of vocational rehabilitation services, or delay or denial notice in accordance with paragraph (2) or (3) of subdivision (a).
- (1) Reminder of Potential Eligibility. If the employee has not requested vocational rehabilitation services after notification of medical eligibility, the claims administrator shall remind the employee of his or her right to vocational rehabilitation services. The notice shall be made not earlier than 45 nor later than 70 days after the employee's receipt of the Notice of Potential Eligibility.
 - (2) Intention to Withhold Maintenance Allowance for Failure to Cooperate. If the employee unreasonably fails to cooperate in the provision of vocational rehabilitation services, the claims administrator shall give the employee written notice of any intention to withhold payment of vocational rehabilitation maintenance allowance, the reasons, and the employee's right to object within 10 days of receiving the notice. The notice shall be made at least 15 days before ending payment of vocational rehabilitation maintenance allowance. The Notice shall include a DWC Form RU 103 "Request for Dispute Resolution" ~~and, if no Rehabilitation Unit case number exists, a DWC Form RU 101 Case Initiation Document.~~

Authority: Sections 59, 133, 138.3, 138.4, 139.5(a)(2), 4636(d), 4637 and 5307.3, Labor Code.

Reference: Sections 138.4, 139.5, 4061(a), (b), (d), 4636, 4637, 4641, 4643, 4644, 4650(a) through (d), 4661.5, 4700, 4701, 4702, 4703, 4703.5, 4903(a) and 5402, Labor Code.

§9813.1. Notice of Supplemental Job Displacement Benefit, Offer of Regular, Modified or Alternative Work. For Injuries Occurring on or after January 1, 2004.

- (1) Notice of Potential Right to Supplemental Job Displacement Benefit (SJDB). Within 10 days of the last payment of temporary disability indemnity, if such notice has not previously been provided, the employer shall advise the employee of his or her potential right to the supplemental job displacement benefit. The employer shall use the mandatory form "Notice of Potential Right to Supplemental Job Displacement Benefit" that is set forth in section 10133.52 of these regulations. The notice shall be sent to the employee by certified mail.
- (2) Notice of Regular Work (where the injured worker is able to return to his or her usual and customary job). Within 30 days of the termination of temporary disability indemnity payments, the employer may offer, in the form and manner prescribed by section 10002 of these regulations, regular work, lasting at least 12 months.
- (3) Notice of Modified Work, (where the injured worker is unable to return to their usual and customary job). Within 30 days of the termination of temporary disability indemnity payments, the employer may offer, in the form and manner prescribed by section 10133.53 of these regulations, modified work accommodating the employee's work restrictions, lasting at least 12 months.
- (4) Notice of Alternative Work, (where the injured worker is unable to return to their usual and customary job). Within 30 days of the termination of temporary disability indemnity payments, the employer may offer in the form and manner prescribed, alternative work meeting all of the conditions of section 10133.53 of these regulations, and lasting at least 12 months.

The mandatory form Notice of Modified or Alternative Work for Injuries occurring on or after January 1, 2004 (Form DWC-AD 10133.53) shall be accompanied by a copy of the Request for Dispute Resolution (Form DWC-AD 10133.55). If the employee rejects the offer of modified or alternative work or does not accept or reject within 30 days of the offer, the offer is deemed to be rejected by the employee.

Authority: Sections 59, 133, 138.3, 138.4, 4658.5, 5307.3, Labor Code.

Reference: Sections 124, 4658.1, 4658.5, and 4658.6, Labor Code.